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tural; and that such relief necessitates a departure from the bargain entered into by the parties so great as to work an undue hardship on the vendor.¹⁵

INDIANS AND THE UNITED STATES. — On the discovery of America, the governments of the old world, to regulate among themselves the right of acquisition, adopted the principle that discovery should give title to the government under which it was made against all other European governments.¹ This principle, although vesting title to the soil in the nation which made the discovery, as against other European nations, was understood not to affect the right of the aboriginal inhabitants to occupancy, but merely to confer on the discoverer the exclusive right to purchase their lands.² By the various charters granted by the King of Great Britain, this title to the soil with the right of preëmption was vested in the colonies, continued in them after the establishment of their independence, and was ceded by them in most cases to the federal government,³ which also by the Constitution was granted the exclusive power to regulate commerce with the Indian tribes.⁴ The United States government continued to deal with the Indians by treaties, made as in the case of treaties with foreign nations,⁵ and becoming the supreme law of the land.⁶ The Indian tribes and nations were regarded as semi-independent communities, administering their own internal governments, but never from the first acknowledged as foreign states.⁷ In 1871 this semi-independence was substantially repudiated by a statute providing that the United States should no longer deal with them by treaty.⁸

From the earliest times, however, the Indians have been regarded as wards of the United States, and the tribes as domestic dependent nations over which the United States might exercise full power of guardianship.⁹ They may be governed by acts of Congress, as well as controlled by treaties.¹⁰ Their land may be disposed of without their consent and no question of deprivation of vested rights without due process of law is thereby raised.¹¹ The constitutional power to regulate commerce with the Indian tribes applies wherever the tribes exist,¹² although their members have become citizens of a state and the commerce occurs out-

¹⁵ *Reilly v. Smith*, 25 N. J. Eq. 158; *Humphrey v. Clement*, 44 Ill. 299. Cf. *Kuratli v. Jackson*, 118 Pac. 192 (Or.). The reasoning of the Pennsylvania court in *Riesz's Appeal*, 73 Pa. St. 485, that relief is refused because of the pressure it would exert on the wife seems unnecessary and is not persuasive.

¹ See *Johnson v. M'Intosh*, 8 Wheat. (U. S.) 543, 573.

² See *Worcester v. Georgia*, 6 Pet. (U. S.) 515, 544.

³ See *Johnson v. M'Intosh*, *supra*, 586.

⁴ U. S. CONST., Art. I, § 8. See *Worcester v. Georgia*, *supra*, 580.

⁵ See *Holden v. Joy*, 17 Wall. (U. S.) 211, 242, 247.

⁶ *Fellows v. Blacksmith*, 19 How. (U. S.) 366.

⁷ *Cherokee Nation v. Georgia*, 5 Pet. (U. S.) 1. It has been held that a state may purchase land by treaty from the Indians, under the supervision of the United States. *Seneca Nation v. Christie*, 126 N. Y. 122, 27 N. E. 275.

⁸ U. S. REV. STAT., 1875, § 2079.

⁹ See *Cherokee Nation v. Georgia*, *supra*, 17.

¹⁰ *United States v. Kagama*, 118 U. S. 375, 6 Sup. Ct. 1109.

¹¹ *Lone Wolf v. Hitchcock*, 19 App. D. C. 315, aff'd in 187 U. S. 553, 23 Sup. Ct. 216.

¹² *Adams v. Freeman*, 50 Pac. 135 (Okl.).

side of the reservation.¹³ On the other hand, the United States has a duty to protect its wards and, as incident to that duty, has certain rights against third parties. It may sue to enjoin interference with Indians' fishing rights;¹⁴ to restrain the collection of taxes from Indians to whom lands have been allotted;¹⁵ and to set aside contracts obtained by fraud from Indians who are citizens of a state.¹⁶ In a recent case, the Supreme Court held that the United States could sue to cancel conveyances made by Indians contrary to the statute under which the lands had been allotted, and that the absence of pecuniary interest in the controversy was immaterial. *Heckman v. United States*, 32 Sup. Ct. 424.¹⁷ Conversely, the United States by the various Depredation Acts has assumed the responsibility for injuries committed by its wards upon third persons.¹⁸

The Indian himself is not a citizen of the United States by birth since not born subject to the jurisdiction thereof.¹⁹ Nor can he become a citizen under the general naturalization law because he does not comply with the color requirement.²⁰ The Dawes Act,²¹ however, in conferring citizenship upon all Indians born within the United States to whom lands have been allotted or who live apart from tribes and have adopted the habits of civilized life, has widely extended this privilege. But even citizenship under this act does not remove the member of an Indian tribe from his position, as ward of the nation.²²

RECENT CASES.

AGENCY — NATURE AND INCIDENTS OF RELATION — FATHER'S LIABILITY FOR TORTS OF SON. — The plaintiff was injured by the defendant's automobile, due to its negligent operation by the defendant's minor son. The son was using the car on a pleasure trip of his own without his father's knowledge but pursuant to a general permission to use it. *Held*, that the defendant is liable. *Stowe v. Morris*, 144 S. W. 52 (Ky.).

The court reasons that the son was the general agent of his father, because the machine was bought for the family pleasure and he was deriving pleasure from its operation. The act of driving the car plus the purpose for which it

¹³ *United States v. Holliday*, 3 Wall. (U. S.) 407.

¹⁴ *United States v. Winans*, 73 Fed. 72.

¹⁵ *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478.

¹⁶ *United States v. Boyd*, 68 Fed. 577.

¹⁷ The fact that the Indian grantors were not joined and that the United States was not suing as trustee of the legal title was held immaterial. *Cf. United States v. Flournoy, etc. Co.*, 71 Fed. 576.

¹⁸ The first act guaranteed eventual indemnification. 4 U. S. STAT. AT LARGE, 729, § 17. This was later repealed. 11 U. S. STAT. AT LARGE, 388, § 8. A later statute makes the United States liable when the Indian defendants are without funds and belong to a tribe in amity with the United States. 26 U. S. STAT. AT LARGE, 851, § 1. When the Indian offenders are unknown the United States is liable alone. *United States v. Gorham*, 165 U. S. 316, 17 Sup. Ct. 382.

¹⁹ *Elks v. Wilkins*, 112 U. S. 94, 5 Sup. Ct. 41.

²⁰ *In re Camille*, 6 Fed. 256.

²¹ 24 U. S. STAT. AT LARGE, 388, § 6.

²² *State v. Columbia George*, 39 Or. 127, 65 Pac. 604.